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February 5, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd  
Chief Clerk / Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

Re: Rulemaking for the Public Service Commission's Procedure to Employ,  
Through Contract or Otherwise, Third-Party Consultants or Experts  
Docket No. 2019-289-A

Dear Ms. Boyd:

On November 8, 2019, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP," together with DEC, the "Companies" or "Duke") filed joint comments in the above-referenced docket concerning draft proposed Rule 103-811, which outlines the process for the Public Service Commission of South Carolina (the "Commission") to engage qualified, independent third-party consultants and experts. In their joint comments, the Companies proposed that the Commission broaden the scope of the rulemaking to address various aspects of the consultant or expert's role in proceedings under S.C. Code Ann. § 58-41-20(A). Consistent with their joint comments, the Companies also proposed amending the draft regulation to add sections (F) and (G), which outline the role of the qualified, independent third-party consultant or expert and set forth the applicable procedural rules governing the involvement of a third-party consultant or expert in proceedings under S.C. Code Ann. § 58-41-20(A). Commission staff subsequently incorporated the Companies' proposed changes and filed the amended proposed Rule 103-811 with the South Carolina Legislative Council. The comment period for Docket No. 2019-289-A expired on December 27, 2019.

On November 25, 2019, the Commission established Docket No. 2019-362-A, *A Rulemaking for the Public Service Commission to Create a New Regulation 103-811.5 Role of the Qualified, Independent Third-Party Consultant or Expert and the Commissioners' Reliance on the Contents of the Qualified, Independent Third-Party Consultant's or Expert's Report*. The Commission has not yet filed a proposed rule in this docket, and comments on the notice of drafting are due by February 13, 2020.



The Commission held a public hearing on proposed Rule 103-811 on January 29, 2020. At the hearing, Commission staff proposed removing sections (F) and (G) from proposed Rule 103-811 in light of the Commission's establishment of Docket No. 2019-362-A for the purpose of addressing the role of the qualified, independent third-party consultant or expert and the Commissioners' reliance on the consultant's or expert's report. As stated at the public hearing, the Companies agree with Commission staff that sections (F) and (G) are more appropriately considered in Docket No. 2019-362-A, which was opened subsequent to the Companies' earlier filing, and therefore concur with Commission staff's decision to remove those sections from proposed Rule 103-811. The Companies believe that those sections, once removed, provide a good starting point for a proposed rule to be considered in Docket No. 2019-362-A and the Company plans to participate in that docket as well.

As noted at the public hearing, the Companies believe it is imperative that the Commission promulgates a regulation concerning the hiring of a third-party consultant or expert that clearly communicates the purpose for which the consultant or expert is being hired. To assist in providing that information we propose that subsection (A) of proposed Rule 103-811 be revised to add a sentence as shown below in bold and underlined:

A. Request for Proposals External qualified, independent third-party consultants or experts shall be procured via Request for Proposals (RFP). Any proposed RFP shall be addressed by the Commission at a publicly noticed meeting where the Commission will determine whether an RFP must be released and shall state the reason(s) for the RFP. Thereafter, the Commission Staff shall prepare and publish the RFP in accordance with the Commission Directive. **An RFP issued pursuant to this rule will include a reference to any applicable rules or regulations that govern the role of the consultant.**

We think that adding this language to Rule 103-811 will then require that any RFPs issued pursuant to that rule will include a reference to the rules and procedures that the Commission eventually adopts as Rule 103-811.5. Because of the order in which the dockets were opened, the Companies believe this approach provides a way to ensure that future RFPs include a reference to the rules governing the role of the third-party consultant or expert.



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February 5, 2020  
Page: 3

Thank you for your consideration of our views on these issues.

Yours truly,

Frank R. Ellerbe, III

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cc: Parties of Record (via email)  
Heather Shirley Smith, Deputy General Counsel (via email)  
Katie M. Brown, Counsel (via email)